

HARDY & ELLISON, P.C.

CONSULTING ATTORNEYS

SUITE 100

9306 OLD KEENE MILL ROAD

BURKE, VIRGINIA 22015

(703) 455-3600

TELECOPIER (703) 455-3603

G. TODD HARDY
(ADMITTED IN D.C. & VA.)
(703) 455-3601 DIRECT

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JAN 25 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MARK C. ELLISON
(ADMITTED IN FL & GA ONLY)
(703) 455-3602 DIRECT

Via Hand Delivery

January 25, 1993

Ms. Donna Searcy
Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, D.C. 20554

Re: MM Docket No. 92-265

Dear Ms. Searcy:

Pursuant to C.F.R. 1.415 and 1.419, please find enclosed one original plus nine copies of the Comments of Consumer Satellite Systems, Inc., d/b/a National Programming Service for filing in the above referenced proceeding.

Thank you for your attention in this matter.

Sincerely



Mark C. Ellison, Esq.

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JAN 25 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554 OFFICE OF THE SECRETARY

In the Matter of)	
)	
Implementation of the Cable)	
Television Consumer Protection)	
and Competition Act of 1992)	MM Docket No. 92-265
)	
Development of Competition and)	
Diversity in Video Programming)	
Distribution and Carriage)	

COMMENTS OF
CONSUMER SATELLITE SYSTEMS, INC.
d/b/a NATIONAL PROGRAMMING SERVICE

Submitted By:

Mark C. Ellison
Hardy & Ellison, P.C.
Attorneys for Consumer Satellite
Systems, Inc.

Suite 100
9306 Old Keene Mill Road
Burke, VA 22015
703-455-3600

January 25, 1993

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SUMMARY

Consumer Satellite Systems, Inc. ("CSS") is one of the largest wholesale distributors of home satellite dish television ("HSD") equipment in the United States. A division of CSS, National Programming Service ("NPS"), is the largest independent packager of satellite television programming in the country. NPS currently serves more than 140,000 subscribers.

Since its creation in 1987, NPS has faced significant difficulties in obtaining access to satellite television programming for distribution to the HSD market. As these comments will show, NPS has, when granted access, been compelled to pay rates for programming which are more than five times the top rates paid by cable systems of comparable size and to accept limitations and conditions not imposed upon other distribution media. NPS contends that it has also been discriminated against in prices, terms, and conditions in comparison to wireless cable operators, satellite master antenna television systems, and cable affiliated HSD program packagers.

The comments of CSS/NPS are designed to present the Commission with a picture of the practices of some programming vendors in the licensing of rights to NPS and the comparison of such licensing to cable and other competitive multichannel video programming distributors.

NPS urges the adoption of rules by the Commission in this proceeding which will permit NPS to demonstrate the harm to its business and its growth, and to the retailers and customers it serves incurred by reason of the terms and conditions NPS has faced in its acquisition of programming distribution rights. It is the view of NPS that notwithstanding the general availability of satellite programming for HSD consumers, there have been and continue to be discriminatory practices in the distribution of video programming which significantly hinder the ability of NPS and other independent HSD program packagers to offer effective competition in that marketplace.

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COMMENTS OF
CONSUMER SATELLITE SYSTEMS, INC.
d/b/a NATIONAL PROGRAMMING SERVICE

Consumer Satellite Systems, Inc. ("CSS") hereby submits its comments in response to the Commission's Notice of Proposed Rule Making ("NPRM") in the above captioned proceeding, released December 24, 1992, concerning the implementation of regulations for the programming access and program carriage agreement provisions of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 102 Stat. ____ (1992) (hereinafter the "Act").

I. INTRODUCTION

CSS is a distributor of home satellite dish ("HSD") receive-only equipment¹ and consumer electronics products. CSS also operates the largest independent program packager for the HSD market in the nation. Established in Indianapolis in 1981, CSS currently operates ten distribution centers in nine states throughout the Midwest and Mid-Atlantic regions.

¹ The use of the term "HSD" in these comments refers to the direct broadcast service operating in C-band, also commonly called television receive-only or "TVRO". In view of the fact that the Commission has previously examined the nature and business of the HSD industry in a number of earlier proceedings, CSS will not provide historical or background information in these comments regarding the HSD industry, except as may be directly relevant to the issues presented in this proceeding.

In 1987, CSS formed a separate division to sell television programming to HSD subscribers. That division, National Programming Service ("NPS"), is actively engaged in the packaging and distribution of satellite cable programming and satellite broadcast programming, as those terms are defined and used in the Act. Today, NPS is the largest non-cable affiliated packager of programming for the HSD market, providing various packages of satellite programming to more than 140,000 households. NPS offers a variety of programming packages² to consumers on a direct basis and through the activities of approximately 2500 affiliated retailers. (All households served by NPS are the customers of NPS, with NPS having full responsibility for billing and the collection of subscription fees.³)

As packager of programming, NPS operates an extensive, state-of-the-art "back office" facility in Indianapolis for the taking of orders and the authorization of consumers' HSD decoders. In the case of most programming services offered by NPS, NPS is able to conduct the initial authorization and any "rehits" (i.e., subsequent authorizations) of the consumer's decoder directly through its own port at the DBS Center operated by General Instrument Corporation in San Diego⁴ utilizing the tier bits of those programmers. The DBS port and associated dedicated phone lines are paid for by NPS. (In the case of some programmers, NPS is not permitted access to the programmer's tier bit and, in those cases, authorization is generally performed through orders transmitted via facsimile to the programmer, a process which is more cumbersome and slower than when NPS has direct tier bit access.)

In many respects, NPS may be viewed as a success story. With 140,000+ subscribers, it is, in terms of total subscribers, as large as the nation's 57th ranked multiple system cable operator ("MSO") and nearly as large as the 45th ranked cable

² A sample listing of the programming offerings of CSS are set forth in Exhibit A hereof.

³ The Commission, at para. 6, fn. 13, has requested comments on the "full scope of the definition of a multichannel video programming distributor", referred to in these comments as "MVPD". NPS submits that a independent packager of satellite television programming for HSD consumers it is the "classic" MVPD which Congress sought to benefit in the Act.

⁴ For further information on the DBS Center and the HSD encryption see PP Docket No. 92-234, Inquiry into Encryption Technology for Satellite Cable Programming, released November 4, 1992.

system, Philadelphia, PA.⁵ However, as these comments will reflect, the terms upon which NPS purchases satellite television programming are not nearly the same as the nation's 57th largest MSO or the 45th system. NPS has faced and continues to face extraordinary difficulties in gaining access to satellite cable programming on fair and equitable terms. Absent those impediments, the "success story" of NPS could be far greater; the benefit to consumers could be far greater; and, correspondingly, the growth of the HSD industry as a viable competitor to cable could have been and could be far greater.

II. THE INTENT OF CONGRESS

The first matter on which the Commission seeks comment is the Congressional objectives in formulating section 19 of the Act, which sets forth new section 628 to the Communications Act of 1934.⁶ While it may be argued that there is ambiguity in the Act with respect to how the goal is to be reached, CSS submits that there should be no confusion about the goal itself. In addition to the Act's stated purpose (found at section 628 (a)), the record is replete with clear statements advocating section 628 as a means to advance the development of competition to cable.⁷ In discussing the need for competition in the video programming marketplace, the House Committee on Energy and Commerce states the following:

The Committee continues to believe that competition is essential both for ensuring diversity in programming and for protecting consumers from potential abuses by cable operators possessing market power. However, for a number of reasons, such competition has not emerged on a widespread basis. The Committee believes that steps must be taken to encourage the further development of robust competition in the video programming marketplace....⁸

⁵ See CableVision, June 29, 1992, "Database", Top 100 MSOs and Top 100 Systems, pp. 52-53.

⁶ NPRM at para. 6.

⁷ See Report of the Senate Committee on Commerce, Science and Transportation, Report 102-92, June 11, 1991, at p. 77 (hereinafter cited as Senate Report).

⁸ Report of the House Committee on Energy and Commerce, Report 102-628, June 29, 1992, at p.44 (hereinafter cited as House Report).

An emphasis on the promotion of competition is also found in the Joint Explanatory Statement of the Committee of Conference on S. 12, wherein the following is found with respect to section 628:

In adopting rules under this section, the conferees expect the Commission to address and resolve the problems of unreasonable cable industry practices, including restricting the availability of programming and charging discriminatory prices to non-cable technologies. The conferees intend that the Commission shall encourage arrangements which promote the development of new technologies providing facilities-based competition to cable and extending programming to areas not served by cable.⁹ (Emphasis added.)

The clear objective of Congress is to promote programming access and develop distribution policies which are fair and nondiscriminatory. How is that objective to be fulfilled? The Commission itself, in an earlier proceeding on competition in the video marketplace, provided a statement which should serve as the basis for its actions in this proceeding. In its Report in MM Docket No. 89-600, the Commission states:

We have indicated that there may be several obstacles to the development of competition to cable systems on the local level. A major component of the ability to compete with cable systems is the ability to secure programming. Ensuring fair and equitable program access is the key to fostering the development of vigorous multichannel competitors to cable...¹⁰ (Emphasis added.)

NPS wholeheartedly agrees with this conclusion and urges the Commission to adopt this precept as the foundation for its actions in this rule making to meet the objectives of Congress.

⁹ Joint Explanatory Statement of the Committee of Conference on S. 12, September 14, 1992, at p. 74 (hereinafter cited as Conference Report) .

¹⁰ Report, In the Matter of Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service, MM Docket No. 89-900, released July 31, 1990 (hereinafter Competition Report).

III. PROGRAMMING ACCESS - PRICE AND TERMS DISCRIMINATION

A. The NPS Experience

The Commission may look at Exhibit A to these comments, see that NPS has access to virtually every satellite cable programming and satellite broadcast service and declare that there is no problem: that there is access and, hence, competition. To reach such a conclusion would be erroneous and inconsistent with the Congressional intent. Regardless of the fact that NPS now has access to programming, as a general rule such access has not come easily, nor has it come on fair and equitable terms. As a result, NPS's efforts to compete in the marketplace have been significantly hindered and the HSD consumers who have purchased the NPS programming packages have been forced to pay greater rates than they would have had there been a truly competitive environment.

The wholesale rates which have been extracted from NPS by the satellite cable programmers have been and continue to be exorbitant in comparison to the rates paid for the same services by cable operators - even cable operators which have fewer subscribers than NPS! Take, as an example, the following group of programming services: CNN, Headline News, USA, Nickelodeon, MTV, VH-1, WTBS, Family Channel, and A&E.

Based upon information contained in the trade press and the Competition Report, the top rate paid by a cable operator for that group of services is believed to be approximately **\$1.42**.¹¹ For the same programming services, NPS pays a total of **\$7.77** - wholesale ¹² - a premium of more than **500%**.

¹¹ Information on cable pricing was drawn from June 24, 1991, January 6, 1992, and July 6, 1992, issues of Multichannel News as well as the Competition Report. The cost of the sample package based upon that data actually totalled \$1.24. For purposes of these comments, NPS has assumed a 15% increase in the top cable rate for these services.

¹² NPS is compelled to present rates to Commission in these comments on a collective basis rather than individually due to contractual nondisclosure limitations.

We would ask the Commission to also consider this fact: according to the programming cost data contained in the Competition Report (and inflated 20% to account for the period of time from the 1990 Competition Report to the present), the top rate paid by a wireless cable operator for CNN, Headline News, Nickelodeon, MTV, and A&E, collectively, is **\$2.74**. For those same services NPS pays a total of **\$5.03**. The services which NPS and wireless cable operators perform are similar if not like. And, NPS would suggest that a wireless operator paying that top rate would not have the equivalent 140,000 subscriber base of NPS.

Similarly, according to programming cost information in the Competition Report (and, again, inflated by 20%) for access to programming services for apartment buildings (commonly referred to as SMATV service), a total of **\$1.87** per month is paid for the following services: CNN, Headline News, Nickelodeon, MTV, USA, and ESPN. For the same group of programming services NPS pays a total of **\$6.63 per month**. SMATV packagers and NPS both perform their own marketing and sales; both handle decoder authorizations, billing, collection and remittance of payment to the programmer. They are "like" services. Yet, NPS - the HSD packager - buys the programming at a cost which is nearly **four times** the amount that the SMATV packager pays.¹³

To summarize the above examples:

<u>Multichannel Provider</u>	<u>Monthly Rate</u>
Cable Operator	\$1.42
NPS	\$7.77
Differential	500+ %

¹³ It is recognized that the wireless cable and SMATV rates used in this example are from 1990, except for the ESPN rate which was obtained from the September 30, 1991, issue of Multichannel News. NPS has, as noted, multiplied those rates by 120% to allow for rate increases. NPS welcomes information in Reply Comments regarding programming costs for cable, wireless cable and SMATV which are more current.

<u>Multichannel Provider</u>	<u>Monthly Rate</u>
Wireless Cable Operator	\$2.74
NPS	\$5.03
Differential	184%
SMATV Distributor	\$1.87
NPS	\$6.63
Differential	354%

It is the belief of NPS that its rates and restrictions are not only unfair vis a vis cable, but also in comparison to the rates and terms received by HSD program packagers which are affiliated with cable operators. While NPS does not have access to agreements between programmers and such cable affiliated packagers, there is evidence in the marketplace that significant price and term differentials exist. An example of this is found in one current offering of Netlink, an HSD packager affiliated with the nation's largest MSO, TCI. A comparison of Netlink's retail offer and NPS's wholesale costs on the same programming package are as follows:

NETLINK Premier Package:¹⁴

Netlink Retail Price	NPS Cost
\$249.95	\$237.00
Netlink net price to dealer = \$224.95	
(Retail price less \$25 commission)	

NETLINK Connoisseur Package:

Netlink Retail Price	NPS Cost
\$342.60	\$329.00
Netlink net price to dealer = \$317.60	
(Retail price less \$25 commission)	

Exhibit B reflects an additional competitive advantage which Netlink apparently has in its programming costs. In addition to the Premier and Connoisseur programming services, a dealer or consumer may add a ViceoCipher^(c) RS ("VCRStm")

¹⁴ See Exhibit B hereof.

module to the package for an additional payment of \$300.00. NPS submits that Netlink's cost for the VCRStm module is approximately \$336.00 (not including shipping and other charges).¹⁵ Hence, not only is Netlink able to offer the programming at a net price that is below NPS's cost, but the margin or differential in Netlink's programming costs appears to be so significant that Netlink can add the module in the package for at least \$30.00 below its cost.

NPS believes that there are other examples of preferential treatment for cable affiliated HSD programming packagers. Until March, 1992, NPS could purchase the Viacom programming services, MTV, VH-1 and Nickelodeon, from SHOWTIME only at the annual RETAIL rate. Under such terms NPS was paying an annual subscription rate of \$30.00 for both MTV and VH-1 (i.e., \$15.00 each) and \$24.95 for Nickelodeon, and NPS could offer these services only on an annual basis. At the same time, several cable affiliated HSD packagers (Netlink and packagers affiliated with Jones Intercable and Cox Cable) were selling those services on a monthly basis at retail rates which were below NPS's costs. NPS subsequently learned that those cable affiliated packagers were paying approximately \$0.85 per service per month, while NPS paid the monthly equivalent of \$1.25 each for MTV and VH-1 and \$2.08 for Nickelodeon.

It may be asserted in response to this information that the cable affiliated HSD packagers were entitled to volume discounts either on the basis of (a) their cable parent's subscriber count or (b) the subscriber count of the respective packager division. With respect to the first volume justification, NPS would urge that the rules promulgated by the Commission here not permit any volume discounts based upon subscribers obtained through a different delivery medium unless it can be shown by clear evidence that the subscriber base in one delivery medium provides direct cost savings in the provision of programming for another delivery technology. Further, a showing should be required that those cost savings are adequate to justify any price differentials between the cable affiliated HSD MVPD and the independent HSD MVPD.

¹⁵ Cost for the VCRS module is based upon the contract for purchase of same by CSS from General Instrument Corporation which recites that the price paid by CSS of \$336 per module is the best price afforded in the industry.

With respect to the second justification, NPS submits that there were not and are not subscriber base differentials between NPS and the cable affiliated HSD providers to justify the price or term differentials. Further, to the extent that a cable affiliated HSD MVPD has a greater subscriber base than NPS, the Commission is urged to consider the fact that such additional subscriber base may be accounted for by the cost and term advantages afforded to the cable affiliated providers during the past several years.

In addition to gaining pricing advantages, the cable related packagers were able to secure more programming rights much earlier than NPS. Despite an aggressive effort by NPS to gain rights, programming contracts have, in many cases, taken NPS more than a year to complete. Even in cases where NPS was willing to execute a standard HSD rate card agreement, there have been months of delay. During the periods when NPS was trying to obtain distribution rights, cable affiliated packagers would close programming deals and be off and running.

NPS has also encountered restrictions in the ways it could offer the programming. From its inception in 1987 until March of 1992, there were key programming services which NPS could offer only on an annual basis in compliance with programmer demands. (As noted above, with respect to the Viacom services MTV, VH-1 and Nickelodeon, cable affiliated HSD packagers were not so constrained and, as noted below, such a restriction remains with respect to ESPN which can be purchased by NPS only at the consumer retail price, only on an annual basis, and only from cable affiliated distributors.) These restrictions prevented NPS from offering programming packages on a monthly basis. This factor, coupled with the high rates NPS was compelled to pay, greatly limited the market for NPS and significantly hindered its growth. During the same time period that NPS was prevented from offering monthly sales, cable affiliated HSD packagers, including Netlink, had the rights to offer these services on a monthly basis and thus had a significant competitive advantage over NPS. Since March of 1992 NPS has been able to offer monthly packages and has made inroads on the market which had been dominated by Netlink.

B. The Attributable Interest Issue

The provisions of section 19 of the Act, insofar as they relate to satellite cable programming vendors, apply only with respect to those vendors in which a cable

operator has an attributable interest. The Commission has requested comment on the threshold of ownership attribution for purposes of enforcement of the Act. In the Senate Report, it is suggested that the Commission follow the same attribution threshold applicable to the broadcasting industry as set forth in 47 C.F.R. Sec. 73.3555.¹⁶ NPS submits that a 5% ownership rule following the provisions of the notes of C.F.R. Section 73.3555 and accompanying notes is reasonable. To impose a higher level would, in the view of NPS, undermine the Congressional objective of promoting competition: the higher the threshold, the further the Commission will be removed from its ability to fulfill the Act's purpose.

In truth, however, ownership attribution in the programming vendor may not be the determinative factor in shaping a programmer's practices. It is not just the degree of control through ownership, but the level of influence based upon the cable operator's subscriber base and the market power of that MSO. In this regard the Commission may want to examine the practice of some programmers in which there is no attributable ownership. For example, if the Commission looks at the practices of ESPN, a non-cable owned programmer, in the HSD market, it would find a considerable difference in its treatment of that market versus cable. As referenced above, ESPN will not license NPS or any independent packager in the HSD market for national distribution other than HBO and SHOWTIME. It is NPS's understanding that such restriction results from provisions in ESPN's cable affiliate agreements which limit its ability to sell to the HSD market. Therefore, NPS and other independent packagers must buy ESPN from HBO or SHOWTIME on an annual basis at the retail price of \$25.00 per year or the equivalent of \$2.08 per month. According to the most recent information available to NPS, the ESPN cable rate is \$0.52 per month.¹⁷

NPS would suggest that it is not vertical integration which causes discriminatory practices. Rather, it is the long standing vertical distribution relationship between the programmer and the cable distributor and the market power of that distributor which has resulted in a disparity of treatment and a diversion from equality. NPS would urge the Commission to be mindful of this in considering appropriate ownership attribution rules.

¹⁶ See Senate Report at page 78.

¹⁷ Multichannel News, September 30, 1991.

C. Discriminatory Practices and the Element of Harm

The Commission has basically posed two questions in regard to this topic: What practices should be considered "unfair", "deceptive", or "discriminatory"?; and, What showing of harm should the Commission require to establish a violation of the Act?¹⁸

i) Harm

Taking the second question first.... In the view of NPS, the NPRM seems to over inflate the need for a showing that access has been denied before relief can be granted.¹⁹ As noted earlier in these comments, NPS has access to the programming, but it has, nevertheless been harmed because of unfair pricing, terms and conditions. As a result, NPS dealers and the HSD consumers have been financially harmed. Again, to meet the Congressional objective of developing and promoting competition, it is imperative that the Commission establish rules which permit remedial action if the price or term differentials adversely affect the multichannel competitor or its viability or its customers, even if that harm is only financial in nature. Even though consumers may have the availability of programming, the rules established here must be based upon a recognition of the importance of competition and the long term benefits such competition will bring to the multichannel marketplace.

In footnote 27 on page 8 of the NPRM, the Commission asks, "...should we permit certain price differentials that adversely affect multichannel distributors but cause no harm to consumers as measured by the availability of, or amount of, programming in the relevant market?" To this NPS responds "NO" and would sincerely hope that the Commission does not for a moment seriously consider such an approach to the problem. (To suggest that if where is access, there is no harm is like saying in a medical malpractice case that so long as the patient lives there can be no recourse regardless of the injury sustained.)

¹⁸ NPRM at para. 10.

¹⁹ Refer to footnote 26 on page 7 of the NPRM.

In considering the element of harm, the Commission should look at both the MVPD and the consumer. When looking at the MVPD, the Commission should consider the entity's profitability, financial strength, and the size of its market share among other factors. It should then consider evidence of the adverse effect of price and terms discrimination on all of those factors. If there has been a significant hindrance of the MVPD's development and operations, remedial actions should be available. When looking at the HSD consumer, the Commission should consider the comparative cost of cable service against the cost of HSD service. That examination should include both the HSD consumer's programming and equipment costs. A cable subscriber and an HSD consumer may each pay \$300 a year for programming, but that does not mean that HSD is competitive. Unlike the cable sub, the HSD owner must purchase or lease the necessary equipment for programming reception. Thus, while each subscriber may be paying \$25 a month for programming, that is the total cost to the cable user while the HSD user's total cost may be three times that amount.²⁰ Only with such a complete examination can the Commission fully assess the competitive situation and the harm to the development of HSD technology.

There can be no doubt that in an environment where one MVPD is paying four to five times (and more) the price for programming as its multichannel competitor, THERE IS HARM, notwithstanding the fact programming may be available.

ii) Discriminatory Practices

The Commission has asked for comments to "identify such practices that we should consider discriminatory".²¹ Many of the practices imposed upon NPS over the past five years are outlined above. NPS suggests that, among others, discrimination or unfair and anticompetitive treatment may be found to lie in the following practices (all of which NPS has experienced or is experiencing): (a) the imposition of unjustifiable wholesale rate differentials between or among competing technologies; (b) requiring that the MVPD buy programming at retail; (c) requiring an MVPD to sell subscriptions only on an annual basis; (d) requiring an MVPD to pay excessive or unnecessary fees for tier bit access for the authorization; (e) the refusal to permit tier bit access; (f)

²⁰ For example, an HSD system costing \$2,500 and financed over 48 months at an interest rate of 10% would result in a monthly payment of \$50.74, in addition to the \$25 programming cost.

²¹ NPRM at para. 15.

requiring that basic services be sold only in packages of other services or in a package containing a minimum prescribed number of other basic services; and (g) refusing to permit NPS to sell certain programs in cabled areas while permitting, either expressly or with tacit approval, other cable affiliated HSD providers to provide such service.

iii) Justifiable Price and Term Differentials

Under the provisions of the Act, a programming vendor is not prohibited imposing reasonable requirements to account for differences in (a) creditworthiness, (b) offering of service, (c) financial stability, (d) character, and (e) technical quality. NPS supports the concept which underlies these exceptions to equality of treatment. In the case of NPS, however, NPS or its parent is entirely capable of meeting the highest standard for each category. In fact, NPS would submit that placed side by side against many of the top 100 MSOs, NPS would compare very favorably. The final rules promulgated here must provide programmers with guidelines for the creation of requirements which are balanced and reasonable and which permit a fair comparison with the standards the programmer imposes for cable and other delivery technologies.

The Act further permits price differentials based on actual and reasonable differences in the cost of creation, sale or delivery or programming; and accounting for economies of scale cost savings or other legitimate economic benefits that are reasonably attributable to the number of subscribers served by the distributors. Again, NPS would submit that the application of these permitted differentials in the case of NPS should not result in any significant pricing differences between NPS and a cable operator, SMATV provider or wireless cable operator or similar size.

To understand why NPS does not feel that any cost based differentials are justified between itself and a comparably sized cable system, it would ask that the Commission consider the following. Acting as an independent distributor, NPS (a) negotiates with the programmer for rights; (b) conducts its own promotions, marketing and sales (in all likelihood receiving less support and materials than that received by comparably sized MSO); (c) takes the subscribers' orders; (d) in most cases, performs the authorization of the subscribers' decoders through a port at the DBS Center for which NPS pays all fees and costs and "rehits" the decoders if needed; (e) handles all billing and collection; and (f) remits payment to the programmer for all NPS subscribers taking the service. To the extent there are specific, identifiable, and

justifiable costs associated with the provision of service to the HSD market, NPS agrees that such costs may be rightfully considered. However, NPS submits that the costs of serving NPS by a programmer is, in many cases for many programmers, equal to or possibly less than the costs associated with serving an MSO of equal or lesser size.

NPS does not take issue with the ability of the programmer to offer reasonable, cost based volume discounts, however, NPS would urge the Commission to establish rules and remedies which will permit a competitive MVPD to demonstrate that there are no justifiable differences between that MVPD and a cable system or SMATV operator of comparable size. If NPS is the same size as the 57th ranked MSO, it should be permitted to present evidence supporting a contention that its rates should be roughly the same as those paid by that MSO, and, having established such evidence, the rules should permit the Commission to expeditiously require the imposition of equal or near equal rates.

NPS, when given the opportunity to present a case to the Commission under the Act, will clearly show that there are few if any cost based differentials between itself and an MSO of similar size. NPS predicts that under no circumstances will a programmer be able to demonstrate that cost differences of 500% or more - such as those NPS has faced - can be justified.

IV. REGULATION OF CARRIAGE AGREEMENTS

Under the provisions of Section 12 of the Act (setting forth new section 616 to the Communications Act), the Commission, *inter alia*, is to establish regulations "designed to prohibit a cable operator or other multichannel video programming distributor from coercing a video programming vendor to provide....exclusive rights against other multichannel video programming distributors as a condition of carriage on a system;"²²

In framing such regulations, NPS would urge the Commission to closely review sample programming agreements between programming vendors and cable operators which contain terms restricting the ability of the programming vendor to license

²² Section 616 (a)(2).

independent or competitive MVPDs in the cable operators' service areas. NPS would specifically urge the Commission to consider the terms and conditions of cable contracts for the carriage of ESPN with respect to terms which prohibit ESPN from licensing any HSD or DBS distributors other than HBO (affiliated with Time Warner Cable) and SHOWTIME (affiliated with Viacom Cable) for the nationwide marketing of ESPN to the HSD market and limiting sale of ESPN in the HSD market to annual subscriptions only within cable areas.

NPS would further urge the Commission to review the terms and conditions of exclusivity between Turner Broadcasting System, Inc. and its cable affiliates with respect to Turner Network Television or "TNT". Such review should be conducted by the Commission with respect to both sections 616 (a)(2) and 628 (c)(2)(C) and (D). NPS is presently restrained from selling TNT in cabled areas and, when selling TNT in non-cable areas, must sell it only in conjunction with a package of other basic services offered by Turner Broadcasting.

V. CONCLUSION

Since the onset of scrambling in 1986, considerable progress has been made in the availability of satellite delivered programming. Nevertheless, the Commission should not (and, in view of the Congressional objectives cannot) allow access alone to be the determinative factor in the formulation of standards and regulations. The playing field is not level. It slants, in fact, at an incredible angle and, at times, oil is poured down the field to make the climb even more difficult. Regulations and enforcement procedures to be promulgated in this proceeding must allow the introduction all relevant evidence and information and permit fair and reasonable remedies. The rules must have as their cornerstone the goal of creating an environment of equality where competition can grow and prosper in the video distribution marketplace.

Respectfully submitted,
Consumer Satellite Systems, Inc.
d/b/a National Programming Service



Mark C. Ellison
Hardy & Ellison, P.C.
Suite 100
9306 Old Keene Mill Road
Burke, VA 22015
703-455-3600

Its Attorney

January 25, 1993



Rates & Commissions - 01-01-93

Annual & 6 Month Rates (Over)

6 Month Services Renew To Annual - Add Approx 10% for Change Card Orders.

Annual Services

6 Month Services

3 Month Services

* Instant Turn On		NPS	STAR			Sugg	STAR	Auto			Sugg	STAR	Auto		
Service#	Description	5+ Retail	Dealer	Serv#	List	Dealer	Comm	Serv#	List	Dealer	Comm	Serv#	List	Dealer	Comm
333	All News Channel *	10.00	8.28	347	5.34	4.14	1.00	364	2.67	2.11	.30				
396	American Movie Classics *	20.00	17.60	410	11.50	8.80	1.25	411	5.70	4.50	.75				
292	Arts & Entertainment Network *	8.50	6.36	350	5.34	3.20	1.00	368	2.67	1.65	.30				
397	Bravo *	10.00	8.50	412	5.34	4.50	1.00	413	2.67	2.07	.30				
786	Cartoon Network *	6.00	3.75	787	5.34	1.95	1.00	788	2.67	1.00	.30				
418	Cinemax	88.00	78.00	426	47.70	40.00	7.00	425	23.85	20.00	1.50				
555	CMTV *	5.00	3.50	556	5.00	2.00	1.00	557	2.60	1.50	.30				
653	CNBC *	7.00	5.15	655	5.34	3.50	1.00	656	2.67	2.00	.30				
101	CNN & Headline News *	21.00	17.75	651	13.00	8.95	2.00	652	6.75	4.50	.75				
415	Comedy Central *	5.00	4.00	422	5.00	2.50	1.00	423	2.60	2.07	.30				
262	Discovery Channel *	8.50	6.20	358	5.34	3.80	1.00	375	2.67	1.90	.30				
327	Disney Channel *	84.00	77.00	454	47.00	40.00	4.00	455	24.75	21.00	1.50				
635	Encore *	24.95	22.50	636	20.00	11.50	4.00	637	10.00	5.85	1.25				
128	ESPN - (HBO Flex Pack)	26.00	26.00	NA				NA							
148	Family Channel *	8.50	5.95	349	5.34	2.75	1.00	367	2.67	1.70	.30				
417	HBO	88.00	78.00	424	47.70	40.00	7.00	427	23.85	20.00	1.50				
103	HBO/Cinemax (Spl Thru 01/31/93)	99.95	84.95	432	59.95	48.00	10.00	433	29.85	25.00	3.50				
442	HBO Value Pack (Spl Thru 01/31/93)	249.00	203.95	NA				NA							
501	KTLA *	13.50	11.50	500	8.10	6.50	1.00	499	4.05	3.30	.45				
611	International Channel *	40.00	35.00	625	27.00	18.00	4.00	741	15.00	9.00	1.25				
240	Lifetime*	8.50	6.50	353	5.34	3.50	1.00	371	2.67	1.80	.30				
641	MTV/VH1	33.00	28.00	642	16.50	14.00	3.00	643	8.25	7.50	.75				
312	The Movie Channel	90.00	85.00	458	53.70	46.00	2.00	459	26.85	23.25	1.50				
745	The Movie Channel/Flix	155.00	130.00	746	90.00	66.00	20.00	747	45.00	34.98	4.50				
274	The Nashville Network*	10.00	8.28	360	5.34	4.14	1.00	378	2.67	2.07	.30				
419	Netlink Denver 5 *	52.00	48.00	420	29.70	25.00	4.00	421	14.85	12.60	1.80				
644	Nickelodeon	27.00	23.50	645	13.50	12.00	2.75	646	6.75	6.10	.75				
522	Playboy *	82.00	65.00	531	57.00	40.00	5.00	532	29.00	24.00	3.00				
341	Prime Sports Network *	8.50	6.50	348	5.34	3.30	1.00	366	2.67	1.65	.30				
108	Prime Time 24 *	39.95	34.00	365	25.00	18.00	3.00	379	12.75	9.00	1.35				
311	Showtime	90.00	85.00	456	53.70	46.00	2.00	457	26.85	23.25	1.50				
742	Showtime/Flix	155.00	130.00	743	90.00	66.00	20.00	744	45.00	34.98	4.50				
104	Showtime/TMC (Spl Thru 01/31/93)	99.95	88.95	460	59.95	48.00	10.00	461	29.85	25.00	3.50				
791	Showtime/TMC/Flix (Spl Thru 01/31/93)	106.95	93.95	792	65.00	50.00	21.00	793	32.50	27.00	4.00				
109	Showtime/TMC w/ Extraview	264.48	240.00	Includes \$5 Showtime Activation Fee				NA							
109	Showtime/TMC w/ Extraview Renewal	269.48	255.00	NA			6.00								
581	Showtime/TMC/Flix w/Ultraview (02/28)	239.00	215.00	Includes \$5 Showtime Activation Fee				NA							
581	Showtime/TMC w/Ultraview Renewal	249.00	221.00	NA			10.00								
466	Spice (Restrictions apply) *	80.00	70.00	467	59.00	40.00	5.00	468	29.50	21.00	3.00				
209	SSN (Satellite Sports Network) *	109.00	97.90	485	62.30	49.50	3.00	486	31.15	26.40	3.00				
805	SUR Canel de Canales (December) S2	131.40	110.00	806	65.70	56.00	13.00	807	32.85	28.00	3.20				
138	TBS, Atlanta * (Cannot sell A la Carte)	15.00	13.20	356	8.10	6.60	1.00	373	4.05	3.30	.45				
648	THS Basic pkg w. TNT (Zip Restrictions)	89.95	85.00	649	50.00	43.00	9.00	650	25.95	21.50	2.25				
781	UV 4 Pak (KTVT, WPIX, WGN, KTLA) *	36.50	30.95	782	22.00	18.75	3.25	783	11.00	9.50	1.00				
133	USA Network * (Cannot sell A la Carte)	10.00	8.00	355	5.34	4.00	1.00	377	2.67	2.00	.30				
248	Weather Channel *	8.50	6.50	354	5.34	3.80	1.00	372	2.67	1.85	.30				
498	WGN *	12.75	11.25	497	8.10	6.00	1.00	496	4.05	3.00	.45				
463	WOR, WSBK * (EMI 2 Pack)	25.00	22.75	464	15.00	12.00	2.00	465	8.10	6.10	.90				

Rebate program. (Start 4-1-91) • 1 month orders from \$10,000 to 19,999 - 1% • \$20,000+ 2% rebate • \$250,000 for our fiscal year earn an additional 1% on ALL purchases. Auto commission percentage based on LOWEST Pick a Pak Retail Cost.

558 - BET, 282 - TLC and 270 - E! TV are Complimentary with USA, A&E & TBS. Not responsible for Typographical Errors.



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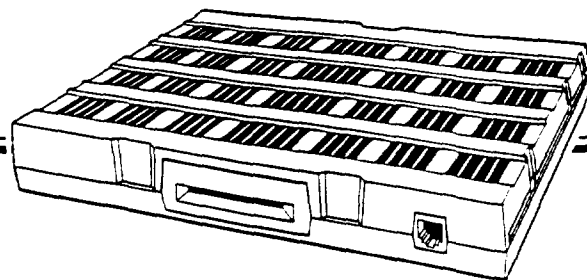
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EXHIBIT B CONTINUED